

## RESOLUTION

AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF PARKS AND RECREATION OF THE CITY AND COUNTY OF HONOLULU, OR HIS DESIGNATED REPRESENTATIVE TO EXECUTE A MEMORANDUM OF AGREEMENT AND LICENSE AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF HIGHWAY LIGHT POLES IN THE PERIMETER WALL AND A PORTION OF THE SIDEWALK OF ALA MOANA REGIONAL PARK

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, states that any intergovernmental agreement or amendments thereto which places an obligation on the City or any department or agency thereof shall require prior consent and approval of the City Council; and

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, also requires that, when carrying out the provisions of any intergovernmental agreement, all applications and or amendments thereof, statistical data, programs, reports or other official communications which support the application and which are required to be provided by the City or its component departments to any other governmental or quasi-governmental agency shall first be presented to the City Council for review and approval prior to its transmittal; and

WHEREAS, the State of Hawaii, Department of Transportation, is undertaking the Nimitz Highway and Ala Moana Boulevard resurfacing and highway lighting project that includes the construction of light poles, together with improvements, equipment, facilities and appurtenances related thereto, on the perimeter wall and portion of the sidewalk located in Ala Moana Regional Park fronting Ala Moana Boulevard; and

WHEREAS, the Department of Parks and Recreation supports this lighting project as it will enhance public safety both on Ala Moana Boulevard and in Ala Moana Regional Park;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Parks and Recreation or his designated representative is hereby authorized to:

1. Execute the Memorandum of Agreement and License Agreement in the same form or substantially the same form as the agreements attached hereto as Exhibits A and B; and

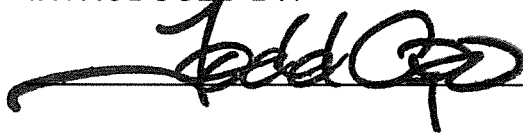


## RESOLUTION

2. Execute any incidental or related agreements and documents in furtherance of the agreements so long as such agreements and documents do not incur additional obligations on the part of the City; and

BE IT FINALLY RESOLVED THAT THE Clerk be and is hereby directed to forward copies of this Resolution to the Governor of the State of Hawaii, Mayor of the City and County of Honolulu, the Director of the Department of Parks and Recreation and the Director of the State Department of Transportation.

INTRODUCED BY:

 (br)

DATE OF INTRODUCTION:

JAN 21 2010

Honolulu, Hawaii

Councilmembers

ALA MOANA R.P.R09

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
CITY AND COUNTY OF HONOLULU  
AND THE  
STATE OF HAWAII**

This **MEMORANDUM OF AGREEMENT ("MOA")**, entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, whose address is 530 South King Street, Honolulu, Hawaii 96813 ("**CITY**"), and the **STATE OF HAWAII**, by its **DEPARTMENT OF TRANSPORTATION**, whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813 ("**DOT**").

The purpose of this MOA is to coordinate the implementation, including planning, design and construction, of DOT's program to install and maintain highway light poles, together with improvements, equipment, facilities and appurtenances related thereto, on the perimeter wall and a portion of the sidewalk, approximately 325' ewa of Atkinson Drive makai, located in Ala Moana Regional Park fronting Ala Moana Boulevard which is colored in blue in Exhibit A attached hereto and incorporated herein ("**Premises**").

NOW, THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. DOT's responsibilities are as follows:

- a. Identify the proposed locations for the installation of the highway light poles.
- b. Obtain the CITY's review and approval of the proposed locations.
- c. Execute a License Agreement with the CITY authorizing DOT to install, operate, and maintain the highway light poles on the sites identified in the License Agreement.
- d. Provide illumination for the walkway abutting Ala Moana Regional Park and the perimeter wall with an average maintained illumination level of 1 footcandle minimum with a 4:1 uniformity ratio.
- e. Install decorative highway lights with fluted aluminum poles on the Premises.
- f. Install all highway lighting conduits and pull boxes within the State right-of-way.
- g. Fund the entire costs of design, installation, construction, operation, inspection, repair and maintenance of the highway light poles.
- h. Inspect, repair, and maintain the highway light poles.

- i. For the installation, operation, inspection, repair and maintenance of the highway light poles:
    - 1) DOT's contractor shall obtain a right-of-entry permit from the CITY for the installation and maintenance of the highway light poles.
    - 2) DOT shall require its contractor to procure and maintain, during the life of each right-of-entry permit and any extensions thereto, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the CITY, its elected and appointed officials, employees and agents as additional insureds and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the CITY.
    - 3) DOT's contractor shall maintain and exercise due care to keep the area surrounding the Premises covered by a right-of-entry permit clear and safe for public use during the term of each right-of-entry permit.
    - 4) DOT's contractor shall restore the Premises covered by a right-of-entry permit to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.
    - 5) DOT, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing their work at the Premises.
  - j. The CITY shall incur no liability of any nature to DOT as a result of the DOT's entry upon, occupation and/or use of the site covered by a right-of-entry permit or the activities of DOT, its officers, employees, agents, contractors and subcontractors, thereupon.
2. CITY's responsibilities are as follows:
- a. Review and approve the proposed location of the highway light poles.
  - b. Review and approve the construction plans for the installation of the highway light poles.

- c. Grant DOT a license to install, operate, and maintain the highway light poles on the Premises in the sites approved by the CITY.
  - d. Issue a right-of-entry permit to DOT's contractor for the installation of the highway light poles after DOT has obtained the CITY's approval to the proposed sites and construction plans for each site.
  - e. Issue a right-of-entry permit to DOT's contractor for the inspection, repair and maintenance of the highway light poles.
3. Modifications. Any extensions, changes or alterations to this MOA shall be agreed to by all affected parties in writing before being undertaken.
4. Termination. DOT shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

IN WITNESS THEREOF, the parties have executed this MOA on the day, month, and year mentioned above.

APPROVED AS TO FORM  
AND LEGALITY:

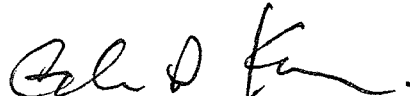
CITY AND COUNTY OF HONOLULU

\_\_\_\_\_  
Deputy Corporation Counsel

By \_\_\_\_\_  
LESTER K. C. CHANG, Director  
DEPARTMENT OF PARKS AND  
RECREATION

APPROVED AS TO FORM:

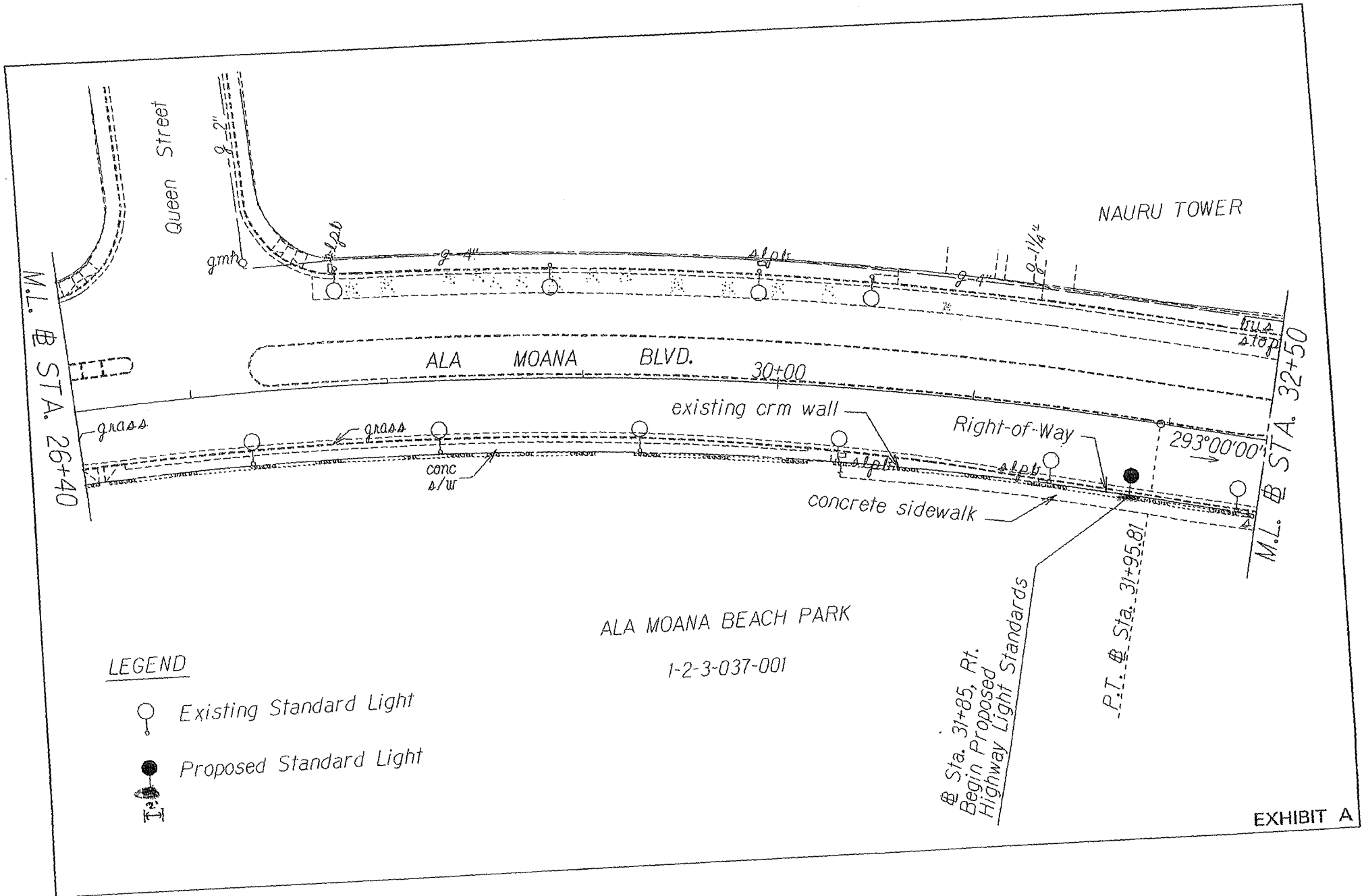
STATE OF HAWAII

By 



  
BRENNON T. MORIOKA, Ph.D., P.E.  
DIRECTOR OF TRANSPORTATION

Deputy Attorney General

Dated: \_\_\_\_\_



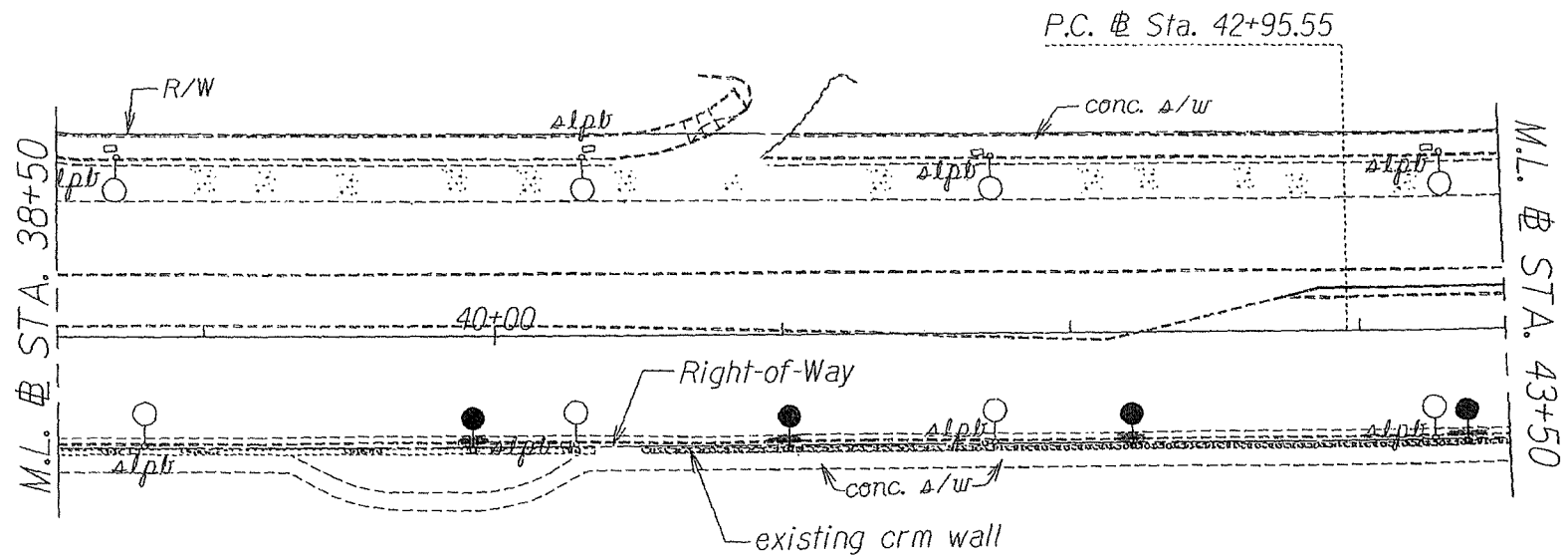
LEGEND

-  Existing Standard Light
-  Proposed Standard Light

ALA MOANA BEACH PARK  
1-2-3-037-001



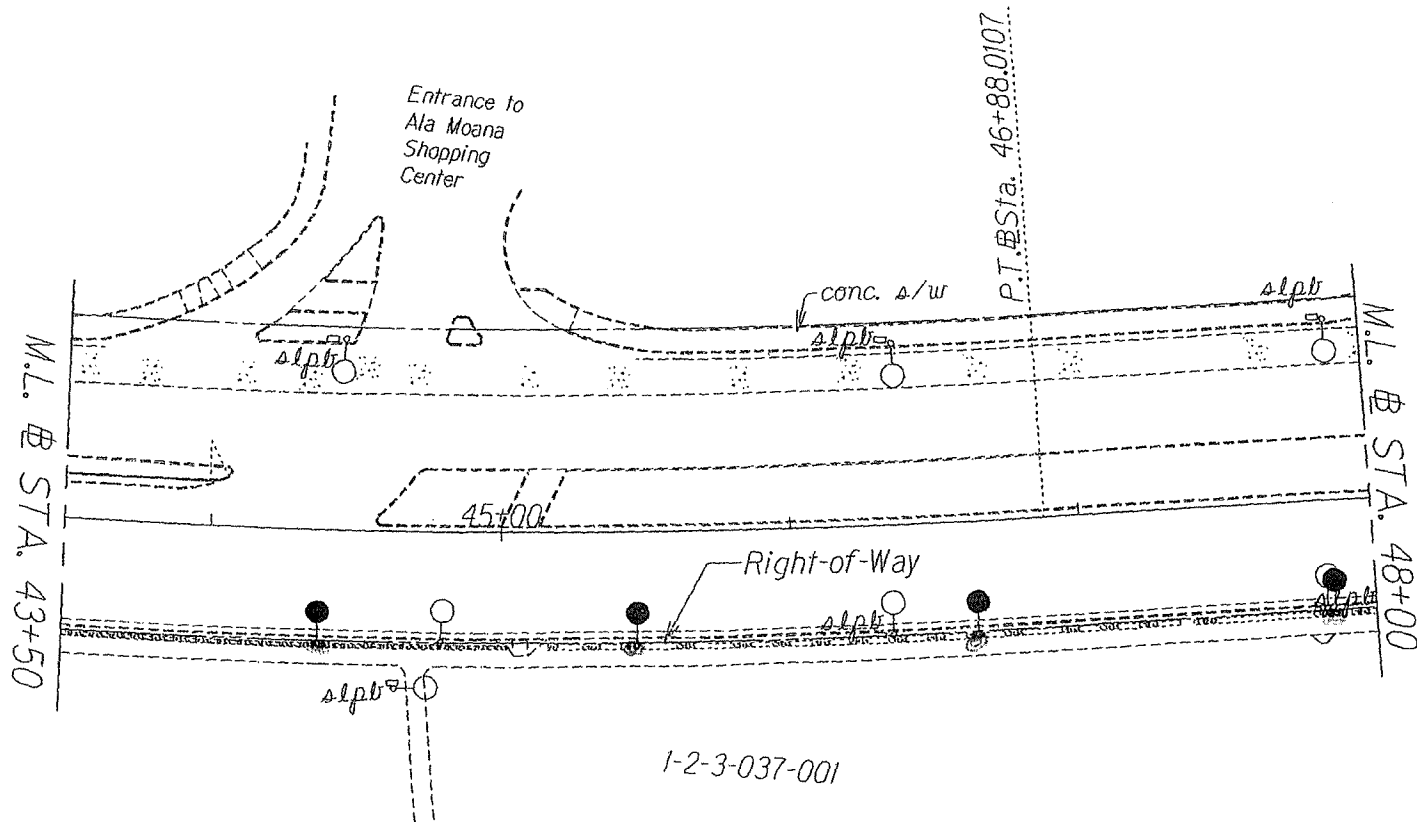
ALA MOANA SHOPPING CENTER



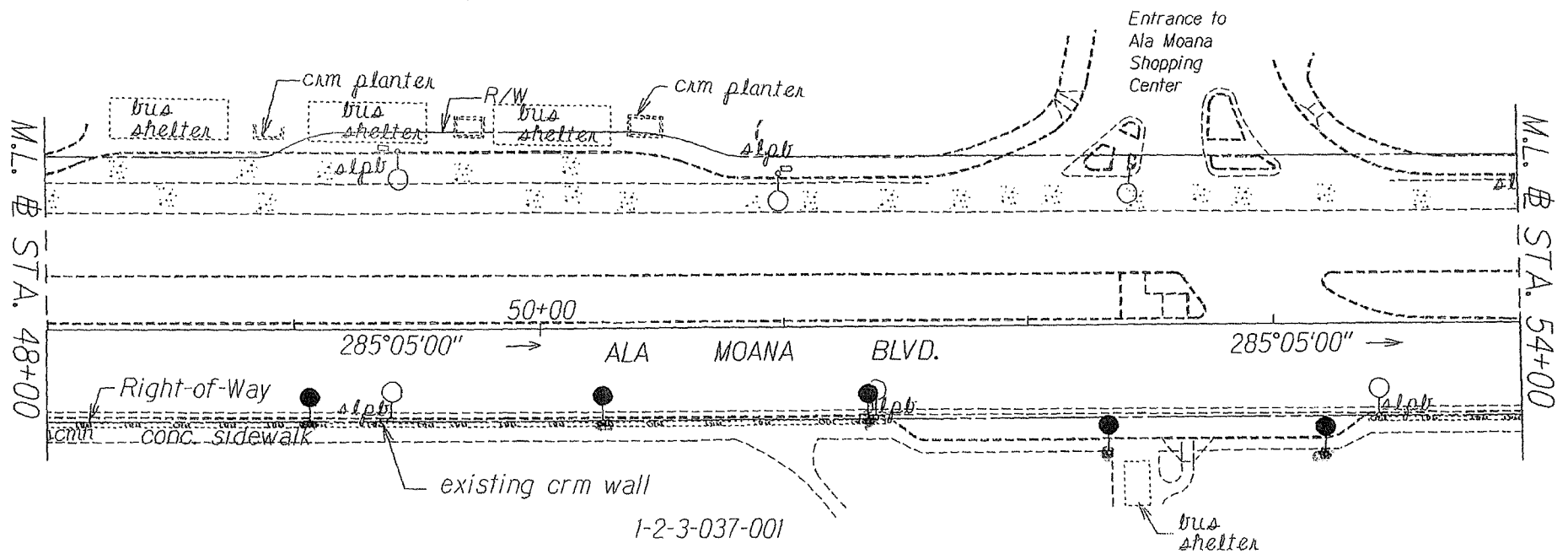
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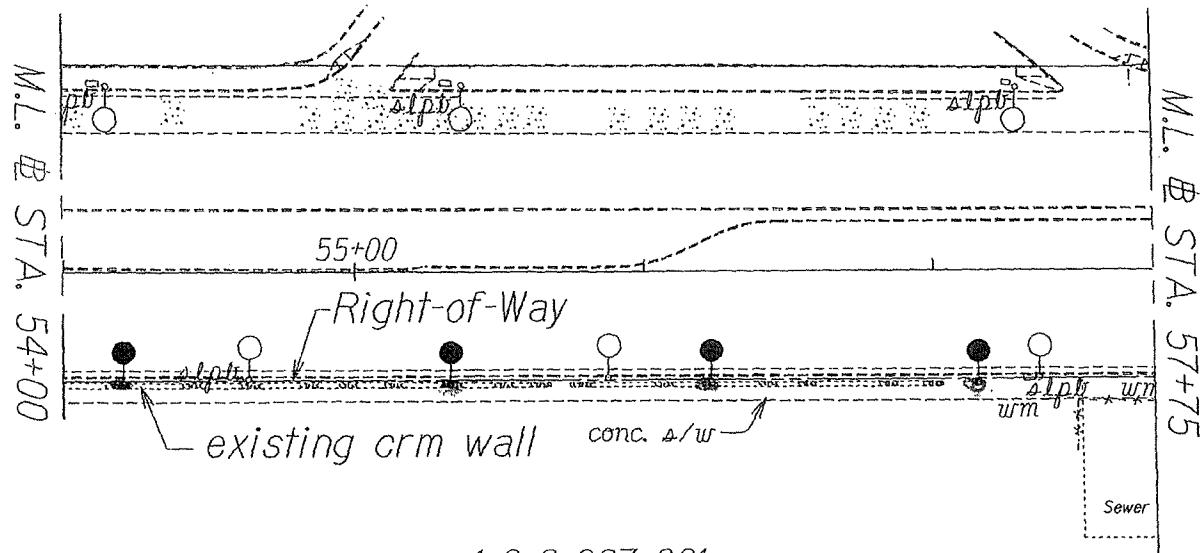


ALA MOANA SHOPPING CENTER



ALA MOANA SHOPPING CENTER

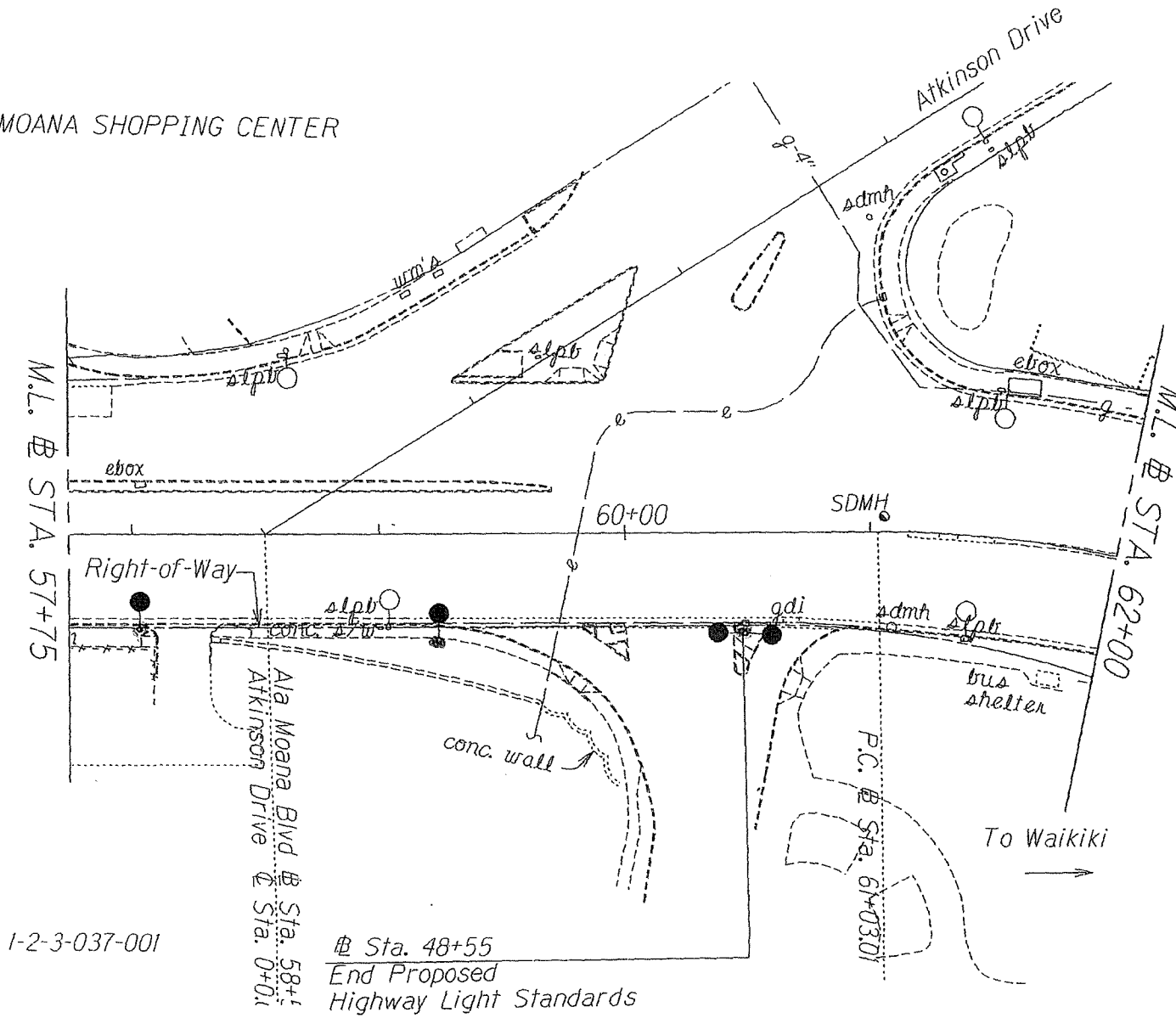




1-2-3-037-001

# ALA MOANA SHOPPING CENTER

TRUE NORTH  
SCALE: 1" = 40'



**LICENSE AGREEMENT  
OVER AND ACROSS  
PORTION OF  
ALA MOANA REGIONAL PARK**

This **LICENSE AGREEMENT** ("License") entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, whose address is 530 South King Street, Honolulu, Hawaii 96813 hereinafter called the "Licensor," and the **STATE OF HAWAII**, by its **DEPARTMENT OF TRANSPORTATION**, whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter called the "Licensee."

W I T N E S S E T H:

WHEREAS, Licensor is the owner or manager of that certain parcel of land identified as Tax Map Key No. (1) 2-3-037:001, and is more particularly described in Exhibit A attached hereto and made a part hereof, hereinafter referred to as the "Property"; and

WHEREAS, Licensee desires to license a portion of the Property, as described and delineated on Exhibit B attached hereto and incorporated herein by reference, hereinafter referred to as the "Premises," for the installation, operation and maintenance of highway light poles, together with improvements, equipment, facilities and appurtenances related thereto; and

**EXHIBIT B**

WHEREAS, Licensor does not object to granting Licensee a non-exclusive license over the Property provided Licensee fully complies with the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. Purpose of License. It is mutually agreed and understood by and between the parties that the purpose for this License is for the Nimitz Highway and Ala Moana Boulevard Resurfacing and Highway Lighting Replacement, Project No. NH-092-1(27), for the improvement of Ala Moana Boulevard which services Ala Moana Regional Park, to include the installation of highway light poles in the perimeter wall and a portion of the sidewalk of Ala Moana Regional Park which will also provide for lighting of the walkway abutting Ala Moana Regional Park.

2. Grant of License. Licensor hereby grants Licensee a revocable non-exclusive license to install, operate and maintain highway light poles, together with improvements, equipment, facilities and appurtenances related thereto, hereinafter referred to as the "Equipment," on the Premises and the right of ingress to and egress from the said Equipment and Property. This License shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the Property.

3. License Term. This License shall become effective on the day and year first above written, and shall continue in full

force and effect for perpetuity except that either Licensor or Licensee may terminate this License upon giving thirty (30) days' written notice.

4. Right to Construct the Equipment. Licensee may construct and maintain the Equipment on, within, under, over and across the Premises provided that Licensee obtains the Licensor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction or installation of any portion of the Equipment on the Premises. Licensee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, inspection, alteration, repair and maintenance costs and expenses.

5. Equipment. The initial installation of the Equipment shall be comprised of highway light standards with concrete foundations, conduits and wiring. The conduits and wiring shall be installed between the highway light standards and the electric pullboxes located in the State right-of-way. No electrical connection or underground utility trenching are required or shall be allowed without the approval of Department of Parks and Recreation.

6. Maintenance. Licensee shall, at its sole cost and expense, maintain said Equipment and appurtenances relating thereto in a good, safe and workmanlike manner, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Property or the Premises.

7. Damage. Licensee shall not damage, undermine or otherwise destroy any portion of the Property or Premises, including, without limitation, any Licensor facilities or improvements situated on or near the Premises or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Licensee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said Property or Premises so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

8. Reservation of Rights. Licensor reserves unto itself the full use and enjoyment of the Premises and to grant to others rights and privileges for any and all purposes affecting the Premises, all without charge by and without the consent of Licensee, provided that such use by Licensor and/or third parties does not unreasonably interfere with Licensee's rights to use the Premises under this License. Licensee shall take steps necessary to ensure that its exercise of the rights and privileges granted



hereunder does not cause any substantial interference with Licensor's operations in or near the Premises.

9. Licensor Work Within or Affecting the Premises. If Licensor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Premises, Licensor will coordinate such work with Licensee. Licensee shall not prevent Licensor from performing such work, provided, however, that Licensor will take protective measures to assure that such work does not unreasonably interfere with Licensee's Equipment or use of the Premises for the purpose of performing routine or necessary maintenance of the Equipment.

10. Ownership of Equipment. The Equipment and appurtenances and all equipment and tools for the maintenance and use thereof placed in or upon the Premises shall remain the property of Licensee and may be removed by Licensee at its own cost and expense at any time during the life of this License or any renewal thereof and shall be removed within thirty (30) days after the expiration of this License or any renewal thereof, or within a reasonable time from the date of receiving written notice from Licensor to change the location of said Equipment and appurtenances or any part thereof upon the said described premises. Licensee shall not in any way alter or relocate said Equipment on the Premises without prior written consent of Licensor. Upon removal or relocation of said Equipment and

appurtenances, Licensee shall restore the Premises to as good a condition as existed prior to the commencement of this License.

11. Assignment. Licensee shall not transfer or assign this License or sublet any part of the Premises or grant any interest, privilege or license whatsoever in connection with this License or the Premises.

12. Damages or Injury Caused by Licensee. In accordance with § 46-71.5 of the Hawaii Revised Statutes, Licensee shall indemnify, defend, and hold harmless the Licensor, its officers, employees, and agents, from any and all claims of liability for any damage to real or personal property or injury to or death of any persons when such damage, injury or death arises out of the action or omission of the Licensee, its officers, employees, agents, consultants, contractors, or invitees (1) in conjunction with the installation, operation and maintenance of highway light poles on the Premises, together with Licensee's improvements, equipment, facilities and appurtenances on the Premises; and (2) in performing their obligations stated in this License.

Notwithstanding the foregoing, Licensee shall not be required to indemnify, defend, or hold harmless Licensor from damages to the extent due to the fault or negligence of the Licensor or Licensor's contractors. This provision shall not be read or interpreted to create any liability of the Licensee or any person or entity to any person or entity, except for the duties to

indemnify, defend, and hold harmless set forth herein. This provision is not intended to and shall not be interpreted to benefit any third person, or to benefit or create any third-party beneficiary.

13. Waiver of Claims. Licensee hereby waives any claims against the Licensor because of damage to its Equipment arising out of any act or omission by Licensor, its elected and appointed officials, employees, contractors and agents or any of them, or from any other cause whatsoever.

14. Abandonment. This License and all of Licensee's rights hereunder shall terminate, without any action on the part of Licensor, in the event of non-use or abandonment by Licensee of the Premises, or any portion thereof, for a period of one (1) year.

15. Removal upon Termination. Upon termination or cancellation of this License, Licensee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Premises and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Premises to as good a condition as existed prior to the installation of this Equipment, satisfactory to the Licensor, and if Licensee fails to restore the Premises to a condition satisfactory to the Licensor, Licensor shall have the right to charge Licensee, and Licensee

shall be solely responsible for, any and all costs and expenses incurred by Licensor in completing and accomplishing such restoration, including, but not limited to any costs the Licensor incurs in removing and disposing of Licensee's Equipment.

16. Default.

i) Notice of default. If Licensee defaults on or otherwise fails to perform its obligations under this License, Licensor will issue a written notice of default to Licensee by hand-delivery or first-class mail.

ii) Licensee to cure defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the Licensor's satisfaction within thirty (30) days of the date of the Licensor's written notice to Licensee or such further time as may be authorized by the Licensor in writing. Licensee's failure to construct the Equipment in accordance with the plans and specifications approved by Licensor shall be deemed a default of this License.

iii) Licensor's remedies for failure to cure. If Licensee fails to cure said defaults or failures to perform within the required time, the Licensor may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure and remedy to Licensee, who shall immediately pay said costs and expenses to the Licensor upon receiving notice from the Licensor.

If Licensee fails to cure said defaults or failures to perform within the required time period, the Licensor may terminate this License and Licensee's rights under this License to use the Premises. Upon such termination and at the Licensor's option, the Equipment will thereafter belong to the ~~licensee~~ Licensor. If Licensee defaults and fails to perform as required under this License, the Licensor shall be entitled to all remedies available under this License and by law, which remedies shall be cumulative and not exclusive.

17. Costs and Attorneys' Fees. Licensor shall be entitled to recover from the Licensee all costs incurred by the Licensor in enforcing any provision of this License which is the Licensee's obligation to perform, including, but not limited to, reasonable attorneys' fees and costs.

18. Agreement/Amendments. This License constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments of this License must be in writing and executed by both parties.

19. Compliance with Laws. Licensee, at all times during the term of this License, shall comply with all of the requirements of federal, state and county authorities and shall observe all federal, state and county laws, statutes, ordinances,

rules and regulations, now in force or which may hereafter be in force.

19. Binding Effect. All provisions contained in this License shall be binding upon and inure to the benefit of the respective parties, their successors, and officers, agents, and employees or any person acting for and on their behalf.

IN WITNESS THEREOF, the parties have caused these presents to be executed the day and year first above written.

APPROVED AS TO FORM  
AND LEGALITY

CITY AND COUNTY OF HONOLULU

\_\_\_\_\_  
By \_\_\_\_\_  
Its

"Licensor"

APPROVED AS TO FORM

STATE OF HAWAII

\_\_\_\_\_  
Deputy Attorney General  
By \_\_\_\_\_  
Dated: \_\_\_\_\_  
BRENNON T. MORIOKA, Ph.D., P.E.  
Its Director of Transportation

"Licensee"

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

RESOLUTION 10-16

Introduced: 1/21/10 By: TODD APO (BR)

Committee: EXECUTIVE MATTERS  
AND LEGAL AFFAIRS

Title: RESOLUTION AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF PARKS AND RECREATION OF THE CITY AND COUNTY OF HONOLULU, OR HIS DESIGNATED REPRESENTATIVE TO EXECUTE A MEMORANDUM OF AGREEMENT AND LICENSE AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF HIGHWAY LIGHT POLES IN THE PERIMETER WALL AND A PORTION OF THE SIDEWALK OF ALA MOANA REGIONAL PARK.

Links: RES10-16  
CR-44

EXECUTIVE MATTERS AND LEGAL AFFAIRS	2/10/10	CR-44 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.					
COUNCIL	2/24/10	CR-44 AND RESOLUTION 10-16 WERE ADOPTED.					
ANDERSON	Y	APO	Y	CACHOLA	A	DELA CRUZ	Y
GARCIA	Y	KOBAYASHI	Y	OKINO	Y	TAM	Y
DJOU	Y						

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
BERNICE K. N. MAU, CITY CLERK

  
TODD K. APO, CHAIR AND PRESIDING OFFICER